

Amendment No. 1 to HB1921

**Marsh
Signature of Sponsor**

AMEND Senate Bill No. 2105

House Bill No. 1921*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 28, Chapter 2, is amended by adding the following as a new section:

28-2-112.

(a) A person, and those claiming through such person, who receives title to a parcel conveyed pursuant to a tax proceeding, as defined in § 67-5-2502, is vested with an absolute and indefeasible title in fee in the parcel, unless a judicial action challenging the title of the parcel is filed in an appropriate court and effectually prosecuted against the person within three (3) years of the recording of the tax deed or order confirming the sale of the parcel in the office of the register of deeds for the county in which the parcel lies.

(b) A person, and those claiming through such person, whether under disability or not, who fails or neglects to file a judicial action challenging the title of a parcel conveyed pursuant to a tax proceeding, as defined in § 67-5-2502, within three (3) years of the recording of the tax deed or order confirming the sale of the parcel in the office of the register of deeds for the county in which the parcel lies, shall be forever barred from challenging the title of the parcel.

(c) As used in this section, the phrase "judicial action challenging the title of the parcel" includes actions to invalidate the title and actions to declare the instrument conveying the title void for any reason. "Judicial action challenging the title of the parcel"

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also includes motions, suits to quiet title or for declaratory judgment, and any other means or court proceeding by which the title to the parcel is attacked.

(d) The right to possession of a parcel pursuant to § 67-5-2503(a) shall constitute adverse possession as to all other claimants of an interest in the parcel without any other action on the part of the person with the right to possession or the person's successors.

(e) This section shall be applicable regardless of whether the instrument of conveyance in a tax proceeding, as defined in § 67-5-2502, is subsequently invalidated or declared void.

SECTION 2. Tennessee Code Annotated, Section 67-5-1801, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) The county trustee shall act as collector of all county property taxes and of all municipal property taxes when the municipality does not collect its own taxes. A municipality that certifies its delinquent tax list to the trustee or delinquent tax attorney is deemed to have authorized the county officers, including the court clerk at a delinquent tax sale, to do all things authorized under parts 18-28 of this chapter with respect to the collection of delinquent municipal taxes, including the ability to convey any interest of the municipality in the property sold, until such time as the municipality's legislative body determines otherwise and causes a document evidencing the determination to be recorded in the office of the register of deeds.

SECTION 3. Tennessee Code Annotated, Section 67-5-2414, is amended by designating the existing language as subsection (a) and adding the following as a new subsection:

(b) The court shall have broad discretion to determine whether a parcel shall be sold separately, combined with other parcels for sale, or subdivided and sold. The court shall consider the following factors:

(1) Whether the parcels have a common owner;

(2) Whether the action proposed is likely to increase the value of the parcel and entice additional bidders to the sale;

(3) Whether separate parcels proposed to be combined are of equal value or the value of each parcel proposed to be combined can be adequately determined prior to the sale so as to determine the distribution of the proceeds of the sale;

(4) Whether the parcels are subject to common lienholders and the amounts secured by each such parcel can be adequately determined prior to the sale so as to determine the distribution of the proceeds of the sale;

(5) Whether a proposed subdivision of the parcel would be in compliance with subdivision and zoning regulations applicable to the parcel;

(6) Whether the proposed action will enable the resulting parcel to be eligible for issuance of a building permit, wastewater disposal permit, or otherwise improve the likelihood of an improvement being constructed thereon; and

(7) Whether the proposed action, after consideration of all facts and circumstances, is more likely to increase the proceeds of the sale.

SECTION 4. Tennessee Code Annotated, Section 67-5-2418(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) Orders may be entered; notices may be filed, including notices adding parties and consolidating cases filed without an order of the court pursuant to § 67-5-2405(b)(2); and judgments may be taken against any one (1) or more defendants included in the action, without affecting the rights of the other parties to the action.

SECTION 5. Tennessee Code Annotated, Section 67-5-2501, is amended by adding the following as a new subsection:

() In the event a taxing entity purchases a parcel pursuant to this section, the taxing entity shall pay to the clerk all amounts owing against the parcel in the tax proceeding within sixty (60) days after the order confirming the sale is entered.

However, the legislative body of the taxing entity may, as to the particular parcel or as to all such parcels, establish a different date by which the amounts shall be paid. The date shall not extend more than five (5) years after the order confirming the sale is entered or the date the parcel is retained or conveyed pursuant to § 67-5-2507, whichever is earlier.

SECTION 6. Tennessee Code Annotated, Section 67-5-2502(a), is amended by adding the following language as a new subdivision:

(5)

(A) Service on or notice to a nominee or agent of an owner, where the nominee or agent is identifiable from information provided in the deed or deed of trust, shall constitute service on or notice to the owner.

(B) Service on or notice to a nominee or agent of an owner, where the nominee or agent is identifiable from information provided in the deed or deed of trust, shall constitute service on or notice to all assignees of the owner if evidence of the assignment has not been recorded in the office of the register of deeds.

SECTION 7. Tennessee Code Annotated, Section 67-5-2503(b), is amended by deleting the language "not taking actual possession of the parcel" from the second sentence of

the subsection and substituting instead the language "not making an advance demand for rents or profits".

SECTION 8. Tennessee Code Annotated, Section 67-5-2504, is amended by adding the following as a new subsection:

(i)

(1) An interested person may file an action to challenge a tax title or the instrument conveying such title if the delinquent tax attorney fails to make a diligent effort to give actual notice of the proceeding to the interested person in accordance with § 67-5-2502(c)(3).

(2) Any challenge to a tax title based on lack of notice to an interested party, including any action seeking to declare a title or the instrument conveying such title void ab initio, shall be considered an action to invalidate the sale of a tax title and is subject to all provisions of parts 18-28 of this chapter applying to actions to invalidate the sale of a tax title, including the required tender of payment before commencement of a suit in accordance with subsection (c).

(3) This subsection (i) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

SECTION 9. Tennessee Code Annotated, Section 67-5-2504(c), is amended by deleting the subsection and substituting instead the following:

(c)

(1) No suit shall be commenced in any court to invalidate or declare void any tax title to a parcel until the party suing shall have paid or tendered to the clerk of the court where the suit is brought, the amount of the bid and all taxes subsequently accrued with interest, penalty, and other charges established by parts 18-28 of this chapter.

(2) The tender requirement of this subsection (c) shall be waived upon the filing of a pauper's oath meeting the requirements established by § 20-12-127. The status of the party suing as a pauper shall be subject to continuing review by the court.

(3) This subsection (c) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

SECTION 10. Tennessee Code Annotated, Section 67-5-2504(d), is amended by adding the following new subdivision:

(6)

(A) In the event a court invalidates any provision of this subsection (d) limiting the time for the filing of an action to invalidate or declare void the sale of a tax title, it is the intent of the general assembly that the interests of the state and its citizenry in promoting the certainty and finality of titles to real property, as described in § 67-5-2103, be considered to determine if exceptional circumstances exist to justify enforcing an invalid or void title.

(B) This subdivision (d)(6) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

SECTION 11. Tennessee Code Annotated, Section 67-5-2508, is amended by deleting the section in its entirety.

SECTION 12. Tennessee Code Annotated, Section 67-5-2509, is amended by deleting the section in its entirety.

SECTION 13. Tennessee Code Annotated, Section 67-5-2510, is amended by deleting the section in its entirety.

SECTION 14. Tennessee Code Annotated, Section 67-5-2507, is amended by deleting the section in its entirety and substituting the following language:

(a)

(1) The county mayor shall cause a certified copy of all orders confirming the sale of a parcel to the county pursuant to § 67-5-2501, to be recorded in the office of the register of deeds of the county. It is the duty of the county mayor of each county to take charge of all parcels purchased by the county at a delinquent tax sale pursuant to § 67-5-2501.

(2) The county legislative body may adopt regulations concerning sales of parcels purchased at a delinquent tax sale. The regulations shall be designed to promote a fair, effective, competitive, and transparent method of disposing of the parcels so as to attain the highest bid for each parcel. The regulations may include:

(A) That parcels may be sold on credit and the terms thereof;

(B) That parcels may be sold for amounts less than the full amount owing in the tax proceeding, the conditions upon which such a sale may take place, and whether such a sale shall be approved by the county legislative body;

(C) Other similar issues regarding the procedures of sale; and

(D) Procedures, terms, and conditions applicable to conveyances of a parcel pursuant to subsection (b).

(3)

(A) Unless otherwise required by the regulations adopted by the county legislative body, each parcel shall be offered for sale with no minimum bid or approval by the county legislative body required.

(B) The county mayor may solicit offers for one (1) or more individual parcels or for all parcels on a list prepared pursuant to § 67-5-2511.

(C) Any solicitation of offers shall contain a statement as to how and where offers may be filed, and shall be published in a newspaper of general circulation in the county.

(4) The county shall be immune from liability for all dues, fees, and assessments secured by a lien upon the parcel purchased by the county at a delinquent tax sale if:

(A) Offers are solicited for the parcel;

(B) No minimum amount is established for a sale of the parcel;

and

(C) No offer is received within thirty (30) days of the publication of the solicitation in a newspaper of general circulation in the county.

(5) Upon a written offer being made to purchase a parcel the county mayor shall cause to be published a notice of the details of such offer with a description of the parcel. During the ten-day period following the date of such publication, if anyone files with the county mayor or the county mayor's designee a written offer to increase the advertised offer by ten percent (10%) or more, the county mayor or designee shall give notice to those persons filing offers to appear at a certain time, date, and location and shall post the notice at a place available to the general public. At such time, date, and location, the county mayor or the county mayor's designee shall conduct an auction of the parcel with the starting bid being the highest written offer received prior to the auction. All persons shall be eligible to offer bids at the auction. The highest bidder at such auction shall be the successful bidder. If no raise offer is timely filed, the original bidder shall be the successful bidder.

(6) The proceeds derived from retentions or conveyances of parcels purchased by the county at a delinquent tax sale pursuant to § 67-5-2501 shall be applied in the following order:

(A) First, proceeds shall be applied to reimburse the taxing entity for amounts paid for the purchase of the parcel in the tax proceeding or which remain owing by the taxing entity;

(B) Any proceeds remaining after the application of proceeds provided by subdivision (a)(6)(A) shall be applied first to unpaid attorney fees allowed in the tax proceeding, then to other unpaid court costs, and then divided on a pro rata basis based upon the taxes levied against the parcel by the county and any other taxing entity;

(C) Any proceeds remaining after the application of proceeds provided by subdivisions (a)(6)(A) and (B) shall be applied to pay other taxes and accrued interest, penalties, and court costs, owed to the county and any other taxing entity on a pro rata basis, based upon the amounts of taxes owing each; and

(D) Any proceeds remaining after the application of proceeds provided by subdivisions (a)(6)(A)-(C) shall inure to the benefit of the county.

(7) Upon compliance with this section, the parcel shall be released from all taxes, penalties, interest, and court costs owing all tax entities, up to the date of the conveyance subject only to any current year taxes which may not have been paid pursuant to this section.

(8) Any conveyance or retention of a parcel that occurs before the expiration of the redemption period provided in part 27 of this chapter shall

remain subject to the right of redemption. No conveyance or retention of a parcel shall affect the redemption period applicable to the parcel.

(9) The county mayor is not required to seek approval of the county legislative body to supervise the sale and conveyance of each parcel unless:

(A) Otherwise required by the regulations adopted by the county legislative body; or

(B) The county legislative body has determined to retain or convey the parcel pursuant to subsection (b).

(b)

(1) The county legislative body may determine that it is in the best interest of the county to retain a parcel purchased by the county pursuant to § 67-5-2501 to use the parcel for a public purpose. The county may retain ownership of the parcel, or it may, subject to such terms as may be agreed upon, transfer ownership of the parcel to:

(A) Any governmental entity; or

(B) A nonprofit entity; provided, that the parcel is transferred in accordance with subdivision (b)(3).

(2) A document evidencing the determination of the county legislative body to transfer or retain ownership of a parcel in accordance with subdivision (b)(1) shall be recorded in the office of the register of deeds.

(3) To be eligible to receive a parcel pursuant to subdivision (b)(1)(B), a nonprofit entity shall comply with the following requirements:

(A) The entity shall be exempt from federal income taxation under § 501(a) of the Internal Revenue Code, codified in 26 U.S.C. § 501(a), or an organization described in § 501(c) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c);

(B) The entity shall agree that the conveyed parcel shall be used by the entity for at least a reasonable period for the purposes for which the entity was chartered; and

(C) The entity shall have been chartered to:

(i) Construct or to restore residential dwellings for the purpose of creating affordable and habitable housing for the disadvantaged and needy citizens of the community;

(ii) Construct or to restore historical properties or buildings in the community;

(iii) Operate or maintain a community garden in the community; or

(iv) Construct, operate, or maintain a park, memorial, or gathering place in the community, available for use by the general public.

(c) Conveyances of parcels shall be made without warranties by the county.

Deeds shall be executed by the county mayor. The execution of a deed shall constitute a certification by the county that all procedures and rules of the county have been complied with and that all interest of the county in the parcel is being conveyed. The certification shall not be overturned absent clear and convincing evidence of a substantial and material violation of a statutorily mandated requirement.

(d) In the event the county mayor determines, prior to the sale of a parcel, that there may be a defect in the title to the parcel, the county mayor may move the court in which the parcel was sold in the tax proceeding, to take action to cure the defect. A diligent effort to give notice of any such motion shall be made as to all interested persons as of the date of the filing of the motion.

(e) In the event a municipality does not authorize the county to convey its interest in tax parcels pursuant to § 67-5-1801(a), or in the event a municipality files a complaint to collect delinquent property taxes owing the municipality separate from the complaint filed by the county to collect delinquent property taxes owing the county, the municipality's governing body and chief executive officer shall dispose of the parcels in accordance with this section and § 67-5-2511. In such event, the municipality's legislative body shall have the powers and duties of the county legislative body as set out in this section and § 67-5-2511; its chief executive officer shall have the powers and duties of the county mayor as set out in this section and § 67-5-2511, and the municipality shall stand in the place and stead of the county.

SECTION 15. Tennessee Code Annotated, Section 67-5-2511, is amended by deleting the section and substituting instead the following:

(a)

(1) The county mayor, with the assistance of the assessor of property, shall cause to be prepared and maintained, a listing of all parcels owned by the county acquired pursuant to § 67-5-2501.

(2) The chief executive officer of a municipality shall cause to be prepared and maintained, a listing of all parcels owned by the municipality acquired pursuant to § 67-5-2501; provided, however, that the listing may omit any property that is required to be listed by a county in accordance with subdivision (a)(1).

(3) Listings pursuant to this subsection (a) shall be prepared by July 1, 2017. The listings shall be published in a newspaper of general circulation in the county or posted on a web site with a notice of the posting published in a newspaper of general circulation in the county.

(b) At least annually the county mayor shall determine if any additional parcels have been purchased by the county pursuant to § 67-5-2501. If so, the county mayor shall publish the updated list in the same manner as the original list pursuant to subdivision (a)(3).

(c) Each list or notice published in accordance with this section shall contain a solicitation for offers to purchase the parcels listed and a statement as to how and where such offers may be filed.

SECTION 16. Tennessee Code Annotated, Section 67-5-2701(a), is amended by deleting the subsection and substituting the following:

(a)

(1) As used in this section, "person entitled to redeem a parcel" means all interested persons as of the date the motion to redeem is filed.

(2) A right to redeem a parcel shall be exercised within one hundred eighty (180) days of the date of entry of the order confirming the sale of the parcel.

SECTION 17. Tennessee Code Annotated, Section 67-5-2701(e)(1), is amended by deleting the language "against the parcel;" at the end of the subdivision and substituting instead the following:

against the parcel, plus penalty and interest at the rate set forth in § 67-5-2010 for delinquent ad valorem taxes, accruing from the date of payment of the additional taxes by the purchaser until the date of payment by the proposed redeemer pursuant to order of the court;

SECTION 18. Tennessee Code Annotated, Section 67-5-2701, is further amended by adding the following new subsections:

(o) During the redemption period, the purchaser shall have no obligation to purchase insurance on the parcel and shall not be liable to a person redeeming the

parcel for damages to the parcel during such redemption period unless such damages are directly caused by intentional acts of the purchaser. This subsection (o) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

(p) During the redemption period and thereafter, a taxing entity which has purchased a parcel pursuant to § 67-5-2501 shall have no obligation to preserve the value of the parcel. This subsection (p) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

SECTION 19. Tennessee Code Annotated, Section 67-5-2702, is amended by deleting subsections (a) and (b) and substituting instead the following:

(a) Following entry of the order of confirmation of sale, any interested person or the purchaser may file a motion with the court requesting disbursement of any excess sale proceeds pursuant to this section.

(b) The movant shall deliver or mail a copy of the motion to all interested persons, as of the date the motion to redeem is filed, who have complied with subsection (d). Such interested persons shall have thirty (30) days from the date of such delivery or mailing in which to respond to the motion.

SECTION 20. Tennessee Code Annotated, Section 67-5-2702, is further amended by adding the following language as a new subsection:

(h) The priority rules in this section apply to all dispositions of excess sale proceeds.

SECTION 21. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 22. This act shall take effect upon becoming a law, the public welfare requiring it.